ther, no proper sanction was obtained from the Minister for the assignment or transfer. Breach of any express condition of the special licence would result in the contravention of Rule 3(1) and (2). Further, appellants and respondents also contravene section 20 of the Ordinance. The agreement between the parties is clearly illegal even without resorting to the Forests Enactment, 1968.

In view of the conclusion that the agreement is illegal, being in breach of the Forest Legislation it is not necessary to touch on the other grounds which are concerned with account stated except to say that they have no merits.

For reasons given, I would dismiss the appeal with costs here and the court below. Deposit to respondents against taxed costs.

Chang Min Tat J. and **Charles Ho J.** concurred.

Appeal dismissed.

Solicitors: *W.K. Loo & Co.; Yong & Wong.*

KHOO THAU SUI v. UNITED ENGINEERS (MALAYSIA) SDN. BHD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat and Charles Ho JJ.) June 17, 1977]

[Kota Kinabalu — Federal Court Civil Appeal No. 131 of 1976]

Hire Purchase — Second-hand tractor — Warranty — Failure to pay instalments — Termination of hiring — Propriety of re-possession — Costs of re-possession and storage — Hire Purchase Act, 1967, s. 15(1).

The appellant had originally entered into a hire purchase agreement relating to a new tractor with a finance company. Subsequently after ten instalments had been paid the agreement was terminated and the appellant then entered into a hire purchase agreement with the respondents relating to the tractor, which was then treated as a second-hand vehicle. The appellant fell into arrears with the instalment and subsequently the respondents terminated the agreement and repossessed the vehicle. The respondents then claimed the instalments outstanding and the costs of repossession and storage and after deducting the value of the tractor, they claimed the balance of $25,036. The appellant claimed that as the vehicle was not trouble-free, he was not liable to pay the instalments. Judgment was given in favour of the respondents and the appellants appealed.

Held: (1) the contention that the appellant was not obliged to pay the hire purchase instalments during the period that the vehicle was being repaired for damages sustained in a fire and consequently the respondents had no right to terminate the agreement was without substance or relevance;

(2) the respondents had complied with the provisions of the Hire Purchase Act 1967 before exercising their right to take possession;

(3) as the appellants had contractually undertaken to pay the costs and expenses of repossession and storage, they could not dispute their obligation to pay the actual costs;

(4) there was no breach of warranty by the respondents in this case as the damage to the vehicle did not come from defective parts or workmanship as in the warranty but was caused by heavy usage and by the fire which it caught.

Cases referred to:-

(1) *Bridge* v. *Campbell Discount Co. Ltd.* [1962] 1 All E.R. 385.

(2) *United Engineers Malaysia Ltd.* v. *Lai Ping Youn* [1968] 1 M.L.J. 189.

FEDERAL COURT.

W.K. Loo for the appellants.

Abdul Razak bin Rouse for the respondents.

Chang Min Tat J. (read by Lee Hun Hoe C.J. (Borneo)): The subject matter of this appeal was an "International" Model BTD 20 (201 Series) Diesel Crawler Tractor, hired out by the respondent to the appellant under a H.P. Agreement made between them on August 5, 1968 (the 1968 Agreement).

It would appear at least arguable whether the machine in question was a vehicle under the relevant Road Traffic Ordinance so as to bring the hiring within the provisions of the Hire Purchase Act, 1967. No thought by either side was given to this consideration. The case proceeded in the High Court on the assumption that the Hire Purchase Act, 1967 applied. It would perhaps be better if the appeal proceeded on the same assumption.

The price of the tractor treated by the respondent as a second-hand vehicle was agreed at $40,224. The cost of the hire was fixed at $5,028 in 8 instalments, the first instalment being paid on the execution of the agreement and the remaining seven payable at monthly intervals. If all the instalments had been paid, the tractor would then become the property of the hirer. But until final and full payment, it remained the property of the hiror, who would be entitled to terminate the hiring and take repossession if any instalment was not paid. In the event, not one of the remaining instalments was paid. The respondent (U.E.) as hiror terminated the hiring by notice on April 3, 1969 and received the vehicle on May 12, 1969. U.E. then claimed the full 7 instalments in the total sum of $35,196 to which it added the costs of repossession and storage in the sum of $9,840. It however allowed a deduction of $20,000 being the value of the tractor. This value was first set at an estimate of $23,000 but it was amended later to $20,000. The total sum claimed was $25,036.

The defence that was delivered made certain allegations of fact, apart from raising defences at law. It disclosed what I believe was the common practice of hire purchase of motor vehicles. U.E. was the importer and seller of the vehicle. It did not normally provide hire-purchase facilities. An intending purchaser without the means to buy the vehicle outright would be introduced to a finance firm, in this case the Malaysian Australian Finance Co. Ltd. (MAF), who would then pay U.E. the price for the vehicle, thereby becoming the owner of it and let it out on hire-purchase terms to the buyer. If it happened that the hirer defaulted in any payment, M.A.F. would terminate the agreement, repossess the vehicle, almost invariably through the agency of U.E. and then sell the vehicle to U.E., who I believe was contractually bound to buy it back. See *Bridge* v. *Campbell Discount Co. Ltd.*[1] for a better description of this arrangement.

This was the arrangement which the appellant alleged in his defence. His H.P. Agreement with M.A.F. was made on April 23, 1966 (the 1966 Agreement). The vehicle was a new one and was priced

at $95,873. An initial payment of $19,174 was made but with the addition of $13,805 as hire charges, the 1966 Agreement was for payment of the hire by 18 monthly rentals of $5,028 per month. From the correspondence admitted in evidence, ten instalments were paid. Eight fell into arrears, even on the extended dates. Finally on May 16, 1968 by letter M.A.F. terminated the Agreement.

It was subsequent to this termination of the 1966 Agreement that the 1968 Agreement was entered into between the appellant and U.E., the hire-purchase price therein being the outstanding balance in the 1966 Agreement, and the monthly hire charges remaining the same.

In this background, the defence still alleged that the 1966 Agreement was still in force and had not been "revoked and cancelled", that the tractor was not a second-hand machine in the 1968 Agreement and that the 1968 Agreement "was not a new agreement replacing in toto the (1966) Agreement but was only a variation thereof to cover the (aforesaid) understanding and agreement" pertaining to the outstanding balance of the hire purchase price payable under the 1966 Agreement. It also alleged that U.E. had no right to terminate the 1968 Agreement or the 1966 Agreement (sic), but at best had only the right to sue for the arrears of instalments, not to repossess the tractor, or to serve notice of intention to repossess.

The appellant went on to counterclaim for payment of —

(a) $74,480 for the instalments and charges paid under the 2 agreements and

(b) $1,194.50 for insurance premium paid and

(c) $2,400 for transportation costs.

The learned trial judge gave judgment to U.E. on the claim and dismissed the counterclaim both with costs. From his judgment the defendant appeals to this court.

It was submitted that the judge erred in finding that the 1968 Agreement was independent of the 1966 Agreement and that the former was merely a variation or a substitution of the latter. With every respect, while it is true to say that in a sense the 1968 Agreement is a substitution of the 1966 Agreement, it is also true to say in law and in fact that the 1968 Agreement is independent of the 1966 Agreement. The earlier agreement had been duly terminated and there can be no argument on the right of M.A.F. to do so or as to the effect of the letter of termination of May 16, 1968. The contractual relationship between M.A.F. and the appellant is contained in the 1966 Agreement between them. That between U.E. and the appellant is in the 1968 Agreement and the tractor being the subject matter of the 1968 Agreement, it is this 1968 Agreement that the court had to construe in determining the claim of U.E. and the counterclaim of the appellant. Also while it is true to say as learned counsel for the appellant claimed that the 1968 Agreement was intended to continue the 1966 Agreement, it is only true in the sense that the effect was to continue the hiring with the practical effect that if the appellant had paid the remaining 8 instalments within the time provided, which was in effect an extension of the original provision, the object of the original hiring would have been achieved, but it is to be realised that the parties are different. And it is also to be realised that the relations inter-se must be determined within the four corners of the 1968 Agreement.

For the same reason, I do not think that the appellant was right in contending that the tractor was a new machine in so far as the 1968 Agreement was concerned. It was certainly a new machine under the original hiring, but when it became the subject matter of the 1968 Agreement, it had been used for some time and it had undergone repairs for damage and defects. With every respect, I cannot conceive how it could in 1968 be regarded as a new machine.

It appears that the whole point of this argument is the question of warranty. There was such a warranty in the 1966 Agreement. The 1968 Agreement however specifically excluded any warranty since the vehicle was described as second-hand goods. But there was no denial by U.E. that it had given by letter dated July 29, 1968 a separate warranty. It covered defects from material and workmanship under normal use and service for a stated period. On this warranty, the appellant argued that so long as the machine was not "trouble-free" as claimed in the defence, he was not liable to pay the instalments. He could only be right in the presence of a provision in the Agreement that the hiror should keep it in repair. Where there was no such provision and in particular where there was a provision as in this case that the hirer should keep the vehicle in repair and where the breakdown of the vehicle could not be brought within the terms of the warranty, this proposition of law, now no more novel, see *United Engineers Malaysia Ltd.* v. *Lai Ping Yoon*,[2] is supportable neither on principle nor on authority. The same authority disposed of any reliance on break-downs during the currency of the 1966 Agreement, if it had any reference to the issues between the parties to the 1968 Agreement. The contention that the appellant was not obliged to pay the hire purchase instalments during the period that the vehicle was being repaired for damages sustained in a fire and consequently M.A.F. had no right to terminate the agreement is without substance or relevance.

Two other objections have been raised on appeal. The first concerns the propriety of the repossession exercise. By section 15(1) of the Hire Purchase Act, 1967, the hiror is required before exercising his power to take possession of the goods hired, to give a notice in the form set out, of not less than 21 days after the service of the notice. Nothing turns on the compliance by U.E. on March 3, 1969 with this subsection. In furtherance of this notice and on the failure of the hirer to make good the default in paying the instalments which were in arrears, U.E. on May 12, 1969 took possession of the tractor from the appellant's camp at Lubok. The tractor arrived at U.E.'s Workshop in Sandakan on June 15, 1969. This workshop was the agreed point for delivery by the hirer at expiration or on other determination of the hiring. Under the provisions of section 15(3), the hirer was required to give notice in set form within 14 days of the act of possession to the hirer that he

could have back the vehicle in question upon paying of the arrears of instalments, and arrears of interest due on overdue instalments, cost of storage, cost of repossession and cost of delivery. Such a notice was sent on June 27, 1969. The point was that if the date of possession was correctly May 12, 1969, this was out of time. U.E. then advised itself that the date of possession was not the date of physical recovery but the date when the tractor was brought to its workshop in Sandakan. If that was so, the notice would have been in time. But their legal advisers felt some doubt about it and found in section 40 Hire Purchase Act, 1967 provisions for the application to a magistrate for extension of time. They therefore made due application to the magistrate, giving notice to the appellant's solicitors. At the hearing, both parties were present. After hearing both counsel, the magistrate made the order giving U.E. 14 days from the date of the order to serve the notice under section 15(3). The order was made on terms. The Order was made on September 23, 1969 and on the same day, U.E. served the required notice on the appellant. It was not contended by the appellant that the magistrate had no powers to make the order he did, but nevertheless counsel for the appellant did launch an attack on the order. This is all the more surprising since he acknowledged in his Petition of Appeal that the terms were unduly harsh on U.E. Now the first term was that no instalment or interest was deemed to have fallen due or accrued between May 15, 1969 to the date of the order. The fact was that all the instalments under the Agreement had fallen due. No other instalments were due. And U.E. claimed the same interest as in the earlier notice; in other words it complied with this term by not claiming further interest. The same applied to the ban on further cost of storage. The other two terms preserved the right of the appellant to contest the reasonableness of the charges and any claim for loss of income from being deprived of the use of the tractor. It is difficult to see what the appellant is complaining about. But it was contended that since no instalments were due from May 15 to September 23, 1969, the notice under section 15(3) during that period was null and void. Even if this could be argued in respect of the notice of June 27, 1969, it could not affect the validity of the notice of September 23, 1969, so that there had been compliance by U.E. with section 15(3).

The second matter concerned the sum of $9.840 for costs of repossession and storage. The appellant did not dispute the quantum but only denied in his defence any liability to pay it. However he had contractually undertaken to pay such costs and expenses and he could not thereafter dispute his obligation to pay the actual costs incurred.

As for the dismissal of his counterclaim, the appellant's first contention that the notice under section 15(3) dated September 23, 1969 was bad has been disposed of. His second was that the vehicle was so defective that it amounted to a fundamental breach which went to the root of the contract. The fact was however that the damage to the vehicle did not come from defective parts or workmanship as in the warranty but was caused by heavy usage and by the fire which it caught. The cases relied on by him are of no relevance, since it was not a case of breach of warranty.

For these reasons I would dismiss the appeal with costs here and the court below and order the deposit to be paid to the respondent towards its taxed costs.

Lee Hun Hoe C.J. (Borneo) and **Charles Ho J.** concurred.

Appeal dismissed.

Solicitors: *W.K. Loo & Co.; Rayner & Co.*

PUBLIC PROSECUTOR v. OH KENG SENG

[F.C. (Suffian L.P., Raja Azlan Shah and Wan Su'eiman F.JJ.) June 22, 1977]

[Kuala Lumpur — Federal Court Criminal Appeal No. 36 of 1976]

Criminal Law and Procedure — Sedition — Whether speech has seditious tendency — Transfer of case from Sessions Court to High Court on certificate of Public Prosecutor — Criminal Procedure Code (F.M.S. Cap. 6), s. 418A — Federal Constitution, Article 8(1) — Sedition Act, 1948, s. 3.

Sedition — Seditious tendency — Sedition Act, 1948, s. 3.

Constitutional Law — Freedom of speech — Federal Constitution, Article 8.

In this case the respondent had been charged with uttering seditious words in a speech delivered by him (the full translation of which was attached to the charge). The case was originally brought in the Sessions Court but was later transferred to the High Court on a certificate signed by the Public Prosecutor under section 418A of the Criminal Procedure Code. The respondent was acquitted without being called for his defence. The Public Prosecutor appealed.

Held: (1) the respondent had gone beyond the limits of freedom of speech. There were passages in the speech which were not legitimate criticism of the sort permissible under section 3(2) of the Sedition Act but were utterances clearly having a seditious tendency of the sort envisaged in both sections 3(1)(a) (to bring unto hatred or contempt or to excite disaffection against the Government) and 3(1)(c) (to promote ill-will between the ethnic groups in Malaysia) of the Sedition Act, 1948;

(2) section 418A of the Criminal Procedure Code is not unconstitutional and it was lawful and proper for the High Court in this case to proceed with the trial on a transfer of the case to it under that section.

Cases referred to:-

(1) *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 155, F.C.

(2) *Fan Yew Teng* v. *Public Prosecutor* [1975] 1 M.L.J. 176; [1975] 2 M.L.J. 235, F.C.

FEDERAL COURT.

P. Mahalingam (Deputy Public Prosecutor) for the appellant.

Yeap Ghim Guan for the respondent.

Wan Suleiman F.J. (delivering the judgment of the Court): This is an appeal against the acquittal of the accused, respondent before us, of the following charge:

"That you on June 23, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached